

commissions. Id. at 3257. The Commission believed that \$6 per phone per month was approximately in the middle of the range of reasonableness created by the three approaches. Id.

A common thread runs through all three of the Commission's approaches: the Commission's projection that the average IPP would initiate 15 interstate dial-around calls each month. Id. at 3256-57. Under a per-call system, there is no need for the Commission to rely on an estimated number of interstate dial-around calls. IPP dial-around traffic patterns may vary based on a variety of factors, including state, city, neighborhood, location, and the type of payphone location. Simply put, given the existence of dial-around tracking capability, it is no longer necessary for the Commission to treat an IPP at a highway rest area in North Dakota the same as an IPP at a bus terminal in Manhattan. A per-call mechanism will necessarily be based on actual traffic patterns at individual payphones, not two or three year old projections of national averages.

At bottom, the level of dial-around traffic changes over time and varies from phone to phone, but the interim compensation mechanism is based on a projected, immutable level of traffic averaged over all phones. Since the basis for the interim compensation rate mechanism is inherently far less precise, and since a per-call mechanism is feasible, the Commission should adopt a per-call mechanism for dial-around compensation.

B. Use Of Access Code Traffic Provides The Most Rational Basis For Determining The Level Of Compensation Paid By An IXC

The most attractive feature of the per-call compensation mechanism is that dial-around compensation is directly tied to the level of dial-around traffic:

Of all the methods of apportionment urged upon us . . . , using the actual amount of access code traffic or revenues would provide the most rational basis for relating the amount of compensation an OSP pays to the number of access code calls its network actually receives.

Rate Reconsideration Order, 8 FCC Rcd at 7155 (emphasis added); Compensation Order, 6 FCC Rcd at 4746 ("It is only fair that these costs be shared by consumers who benefit from the ability to make access code calls and by the OSPs who derive revenue from the calls").

The Commission is correct. From the IXC's perspective, a per-call compensation mechanism is an equitable way to assess dial-around costs to the cost-causers. The IXCs seem to agree:

MCI says that under a per-phone compensation mechanism, OSPs would be required to pay compensation for those payphones that generate few or no access code calls. MCI believes that result would be undesirable.

Rate Order, 7 FCC Rcd at 3252 (footnote omitted). Additionally, a per-call mechanism sends an economic signal to IXCs by ensuring that IXCs receiving a substantial amount of access code calls pay more dial-around compensation. Under the current flat-rate system, an IXC can increase its dial-around traffic without incurring any additional compensation costs. From the IXC's perspective, the additional dial-around calls are "free" calls. As a result, the

IXC receives a misleading economic signal suggesting that additional dial-around calling does not result in any increase in the IXC's share of compensation payments. Per-call compensation corrects this misleading signal and thereby encourages rational marketing and policy decisions by IXCs.

C. A Per-Call Mechanism Sends The Correct Economic Signals To The Payphone Market Place

A per-call mechanism will send the right economic signals to the IPP providers. At bottom, a per-call mechanism will provide "greater incentives for [IPP providers] to place their payphones in locations that generate the most interstate traffic"

Rate Order, 7 FCC Rcd at 3253.

Under the current flat-rate mechanism, an IPP that initiates 50 dial-around calls is compensated at the same rate as an IPP that originates only five dial-around calls. From an access code compensation perspective, there is little incentive for the first IPP provider to install additional phones at the busy location: the IPP provider will receive just as much access code compensation for a phone in a busy location as for a phone in a low traffic location.

A per-call mechanism would initially adjust IPP providers' compensation to reflect any change between (1) the number of access code calls projected by the Commission in the 1992 Rate Order and (2) the actual number of dial-around calls at a particular payphone. Furthermore, subsequent variations in the level of access code traffic would also be tracked. In other words, unlike

the interim, flat-rate mechanism, if access code traffic at a particular payphone increases under the per-call mechanism, access code compensation would also increase. Conversely, if access code traffic at a particular payphone decreases, access code compensation would also decrease. Thus, a per-call compensation mechanism enhances the incentives for IPP providers to place payphones in busy traffic areas.²⁵

D. AT&T Petition For Waiver

As noted above, AT&T is filing concurrently a petition requesting a waiver of the Commission's regulations and appropriate authorization to allow AT&T to begin, as soon as possible, providing access code compensation using the compensation mechanism outlined above. Since AT&T, which represents 60-65% of the toll market, is proposing to pay a per-call rate and track and match dial-around calls using essentially the same methodology described above, there is no valid reason preventing the Commission from implementing the very same compensation mechanism for other major long distance carriers.

²⁵ The Commission has explained that incentive regulation enhances efficiency and innovations:

Opportunities presented by incentive regulation for enhancing efficiency in the . . . industry include the opportunity to provide better incentives for innovation. Innovation is not a term we define narrowly, as several parties do, to mean technological breakthroughs that lead to new services or offerings. Our definition of innovation is far broader. Our definition incorporates innovation in management systems, administration, and the multitude of what economists term "inputs" that are used to produce a firm's "output."

Price Cap Order, 5 FCC Rcd at 6790.

CONCLUSION

Dial-around compensation can be implemented without delay on a per-call basis. Most dial-around calls can be tracked; reliable surrogates can be used to estimate the number of 950 access calls. Simply put, since the Commission has repeatedly expressed its preference for a per-call compensation mechanism, and since a per-call mechanism can be implemented immediately, there is no valid reason to delay establishing a usage-based dial-around compensation mechanism that furthers stated Commission goals and fairly compensates IPP providers.

WHEREFORE, in view of the foregoing, APCC respectfully requests that the Commission (1) promptly initiate a rulemaking proceeding, (2) expeditiously review industry comments, and (3) issue a final order, effective January 1, 1995, prescribing a per-call mechanism of compensation for interstate, dial-around calls.

Respectfully submitted,



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Empire State Payphone Association

Florida Pay Telephone Association

**Georgia Public Communications
Association**

**Independent Payphone Association of
New York**

Indiana Payphone Association

Iowa Payphone Association

Louisiana Payphone Association

Michigan Payphone Association

**Minnesota Independent Payphone
Association**

**Mississippi Public Communications
Association**

Nevada Payphone Association

New Jersey Payphone Association

New Mexico Payphone Association

North Carolina Payphone Association

Northwest Payphone Association

**Ohio Public communications
Association**

South Carolina Payphone Association

Texas Payphone Association

Utah Payphone Association

Dated: July 19, 1994

ATTACHMENT 1

**Revised 47 CFR § 64.1301
([Competitive] Independent Public Payphone Compensation)**

ATTACHMENT 1

Revised 47 CFR § 64.1301

(~~[Competitive]~~ Independent Public Payphone Compensation)

Underlining indicates added material

Brackets indicate deleted material

(a) Each ~~[competitive]~~ independent public payphone shall be eligible for compensation [in the amount of \$6 per payphone per month] for originating interstate access code calls. ~~[Competitive]~~ Independent public payphones are those pay telephones not owned or controlled by the local exchange carriers (LECs) or AT&T.

(b) This compensation shall be paid by interexchange carriers (IXCs) that both:

(1) earn annual toll revenues in excess of \$100 million, as reported in the FCC staff report entitled "Long Distance Market Shares;" and

(2) provide live or automated operator services.

Except as provided in subsection (d) below, each individual IXC's compensation obligation shall be set as a monthly rate per payphone. Each IXC's monthly rate shall be the same proportion of \$6.00 as [in accordance with] its relative share of toll revenues among IXCs required to pay compensation. For example, if total toll revenues of IXCs required to pay compensation is \$50 billion, and one of these IXCs earned \$5 billion in total toll revenues, the IXC must pay \$0.60 per payphone per month.

(c) Initial monthly per-payphone compensation obligations are set forth in Appendix B of the Commission's Second Report and Order in CC Docket No. 91-35, released May 8, 1992. Compensation obligations shall be adjusted periodically if the operational

status of any eligible IXC changes or in accordance with revised toll revenue data. In either such event, the Common Carrier Bureau shall issue a public notice showing the revised compensation obligations. These revised obligations shall become effective on the date specified in the public notice.

(d) In lieu of paying compensation on a flat-rate basis, IXCs designated by the Commission shall pay compensation, for IPPs located in equal access areas, on a per-call basis at the per-call rate established by the Commission. The amount of such per-call compensation, and the IXCs required to pay such per-call compensation, shall be determined by order of the Commission. In addition, any IXC that is required to pay compensation may elect to pay such compensation on a per-call basis at the per-call rate established by the Commission. IXCs that pay compensation on a per-call basis are required to maintain accurate records of the access code calls they receive from independent public payphones. IPPs not located in equal access areas shall continue to be compensated by all IXCs in the manner provided by subsection (c).

(e) If an IXC that pays per-call compensation receives 950 access code calls and is not able to track such calls, that IXC shall pay compensation for 950 calls based on the following methodology:

(1) for each independent public payphone, multiply the number of 10XXX and 1-800 access code calls from that payphone by the ratio of that IXC's 950 access code calls to its 10XXX and 1-800 access code calls, as such ratio is determined by Commission order;

(2) multiply the product of the calculation in (e)(1) above

by the per-call compensation rate established by the Commission:

(3) pay such amount to the provider of that independent public payphone.

(f) IXCs obligated to pay compensation and [competitive] independent public payphone owners are responsible for establishing their own billing or payment arrangements.

(g) LECs shall provide IXCs paying compensation under [paragraphs (b) and (c) of] this section with a list each quarter of all telephone lines receiving customer-owned coin-operated telephone (COCOT) service in the LEC's region as of the date the list was generated.

ATTACHMENT 2

**PRESS RELEASE ANNOUNCING THE AGREEMENT
BETWEEN APCC AND AT&T
ON PER-CALL COMPENSATION FOR ACCESS CODE CALLS**

2000 M Street, N.W., Suite 550
Washington, D.C. 20036-3367
(202) 296-9800
FAX (202) 296-4993

For Immediate Release

Media Contacts:
Al Kramer (202) 789-3419
Jon Mellor, AT&T (908) 221-5017

APCC & AT&T Agree To Per-Call System

Washington, D.C., April 7, 1994— AT&T and the American Public Communications Council, Inc. (APCC), today announced an agreement to establish a per-call compensation system for independent public payphone (IPP) providers.

The agreement would allow IPP providers to receive \$.25 per call from interexchange carriers, like AT&T, when callers make access code calls from IPPs. (Consumers may use access codes, such as 1-800-CALL-ATT and 10ATT-0+, to reach their preferred long distance company from pay telephones. These calls are often referred to as "dial-around" calls.)

The \$.25 per call "dial-around" compensation is intended to replace the existing interim per-phone compensation established by the Federal Communications Commission (FCC) and several state regulatory commissions (to date, Florida, Georgia, and South Carolina). The \$.25 would be paid on interstate, intrastate, and international calls.

APCC and AT&T agree that per-call compensation is superior to the current per-phone compensation schemes, which are not related to the actual volumes of "dial-around" calls. APCC will work with AT&T to implement this agreement as soon as remaining technical and regulatory issues are resolved.

ATTACHMENT 3

**CALCULATION OF MCI'S RATIO OF
950 ACCESS CODE CALLS
TO OTHER ACCESS CODE CALLS**

IPP PROVIDER NO. 1

SURVEY PERIOD: 6/93-11/93

NUMBER OF PHONES: 506-834

ACCESS CODE NUMBER	NUMBER OF CALLS
10222	505
1-800-COLLECT	5,406
1-800-674-0700	790
1-800-674-7000	21,397
1-800-950-1022	4,957
1-800-950-1111	7,677

TOTAL	40,732
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950-1022	8,459
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RATIO OF 950 CALLS TO OTHER ACCESS CODE CALLS

$$8459/40,732 = .21$$

IPP PROVIDER NO. 2

SURVEY PERIOD: 10/16-11/15/93

NUMBER OF PHONES: 49

ACCESS CODE NUMBER	NUMBER OF CALLS
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102220+	6
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102220-	1
---------	---

1-800-COLLECT	105
---------------	-----

1-800-674-0700	63
----------------	----

1-800-674-7000	307
----------------	-----

1-800-950-1022	34
----------------	----

1-800-950-1111	120
----------------	-----

TOTAL	636
-------	-----

950-1022	244
----------	-----

RATIO OF 950 CALLS TO OTHER ACCESS CODE CALLS

$$244/636 = .38$$

IPP PROVIDER NO. 3

SURVEY PERIOD: 1/26-2/7/94

NUMBER OF PHONES: 25

ACCESS CODE NUMBER	NUMBER OF CALLS
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10222	4
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1-800-COLLECT	44
---------------	----

1-800-674-0700	51
----------------	----

1-800-674-7000	
----------------	--

1-800-950-1022	
----------------	--

1-800-950-1111	
----------------	--

TOTAL	99
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950-1022	30
----------	----

RATIO OF 950 CALLS TO OTHER ACCESS CODE CALLS

$$30/99 = .30$$

IPP PROVIDER NO. 4

SURVEY PERIOD: 8/93, 10/93, 11/93, 12/93, 1/94

NUMBER OF PHONES: 900

ACCESS CODE NUMBER	NUMBER OF CALLS
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10222	343
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1-800-Collect	23,400 (proj.)*
---------------	-----------------

1-800-674-0700	1,200 (proj.)*
----------------	----------------

1-800-674-7000	32,334
----------------	--------

1-800-950-1022	12,362
----------------	--------

1-800-950-1111	13,722
----------------	--------

TOTAL	83,361
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950-1022	11,147
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RATIO OF 950 CALLS TO OTHER ACCESS CODE CALLS

$11,147/83,361 = .13$

* Direct SMDR data were not available for these access codes. These numbers are projected based on calculations of the average ratio of 1-800-Collect calls to other access code calls and the average ratio of 1-800-674-0700 calls to other access code calls, using the data recorded in the other IPP providers samples.

IPP PROVIDER NO. 5

SURVEY PERIOD: 2/94

NUMBER OF PHONES: 70

ACCESS CODE NUMBER	NUMBER OF CALLS
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10222	0
-------	---

1-800-COLLECT	1,368
---------------	-------

1-800-674-0700	12
----------------	----

1-800-674-7000	749
----------------	-----

1-800-950-1022	3
----------------	---

1-800-950-1111	6
----------------	---

TOTAL	2,138
-------	-------

950-1022	80
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RATIO OF 950 CALLS TO OTHER ACCESS CODE CALLS

$$80/2,138 = .04$$

COMPOSITE STATISTICS

IPP PROVIDER NO. 1	.21
IPP PROVIDER NO. 2	.38
IPP PROVIDER NO. 3	.30
IPP PROVIDER NO. 4	.13
IPP PROVIDER NO. 5	.04

TOTAL	1.06
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MEAN = $1.06/5 = .21$ (average)

HIGH = .38; LOW = .04; AVERAGE OF EXTREMES = .21

MEDIAN = .21

ATTACHMENT 4

**CALCULATION OF LDDS' RATIO OF
950 ACCESS CODE CALLS
TO OTHER ACCESS CODE CALLS**

IPP PROVIDER #1

SURVEY PERIOD: 6/93-11/93

NUMBER OF PHONES: 506-834

ACCESS CODE NUMBER	NUMBER OF CALLS
1-800-275-1234	1,034
1-800-741-9000	908

TOTAL	1,942
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950-1450	591
----------	-----

RATIO OF 950 CALLS TO OTHER ACCESS CODE CALLS

591/1,942 = .30

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

IN THE MATTER OF PETITION OF THE)
AMERICAN PUBLIC COMMUNICATIONS COUNCIL)
AND STATE PAYPHONE ASSOCIATIONS)
TO INITIATE, ON AN EXPEDITED BASIS,)
A RULEMAKING PROCEEDING TO AMEND) RM _____
SECTION 64.1301 OF THE COMMISSION'S)
REGULATIONS TO ESTABLISH PER-CALL)
COMPENSATION OF INDEPENDENT PUBLIC)
PAYPHONE PROVIDERS FOR ACCESS CODE CALLS)

**MOTION OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
AND STATE ASSOCIATIONS
TO WAIVE THE COMMENT PERIOD ON
THEIR PETITION FOR EXPEDITED RULEMAKING**

American Public Communications Council ("APCC"), and the twenty-three state and regional associations of independent public payphone ("IPP") providers listed on the signature page ("State Associations"), pursuant to Sections 1.3, 1.401, 1.403, 1.405, and 1.407 of the regulations of the Federal Communications Commission ("Commission"), 47 CFR §§ 1.3, 1.401, 1.403, 1.405, and 1.407, hereby request that the Commission waive the public notice and comment period provided in Sections 1.403 and 1.405 of the rules, so that the Commission can proceed immediately to issuance of a Notice of Proposed Rulemaking ("NPRM") in response to the petition for expedited rulemaking filed on this date by APCC and the State Associations.

Petitioners seek issuance of an NPRM to amend Section 64.1301 of the Commission's regulations, 47 CFR § 64.1301, to establish a usage-based mechanism of access code compensation for independent

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public payphone ("IPP") providers. Specifically, in a petition being filed today, APCC and the State Associations are requesting that the Commission amend Section 64.1301 of the regulations so that IPP providers are compensated on a per-call basis for interstate access code calls.

The Commission's rules provide that any interested person may file a petition to amend a rule or regulation. 47 CFR § 1.401. A petition for rulemaking is assigned a file number, and public notice of the petition is published. 47 CFR § 1.403. After notice is issued, interested persons "may file a statement in support of or in opposition to a petition for rule making" 47 CFR § 1.405. If the petition discloses sufficient reasons to justify support of the requested action, the Commission will issue a NPRM. 47 CFR § 1.407.

There is no statutory right to comment on a petition to amend the Commission's rules. In fact, the Commission has explained:

[T]he APA does require publication in the Federal Register of Notices of Proposed Rule Making, as well as an opportunity for interested persons to comment thereon. See 5 USC § 553(b) and (c). However, Section 553(e), which grants to all interested persons the right to petition for rule making, is silent as to whether that right entails public notice and comment on the petition.
* * * Indeed, in a random sampling of the rules of practice of other agencies, all seven reviewed had no mandatory notice and comment procedure on petitions for rulemaking.

Amendments to Part 0, § 0.281(b)(6), and Part 1, §§1.401 and 1.405(d) of the Commission's Rules, with Respect to the Delegation of Authority to the Chief, Broadcast Bureau, and Procedures

Regarding Petitions for Rule Making, Memorandum Opinion and Order,
79 FCC 2d 1, 2 n.4 (1980).

Under Section 1.3 of the Commission's regulations, any provision of the Commission's rules can be waived "for good cause shown." See 47 CFR § 1.3 (1993). See also Northeast Cellular L.P. v FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); Brookings Municipal Telephone, 72 RR2d 508, 509 (1993). APCC and the State Associations submit that good cause exists for a waiver of the initial comment period.

Where the purposes of the Administrative Procedure Act are adequately served by a single notice and comment period, it is appropriate to dispense with pre-NPRM comments on a petition for rulemaking. See Amendment of Policies and Procedures for Amending the FM Table of Assignments, §73.202(b) of the Commission's Rules, First Report and Order, 88 FCC 2d 631 (1981) (eliminating pre-NPRM comments concerning requests to add new FM channel assignments).

An initial comment period (before the issuance of the NPRM) provides the Commission and interested parties with a preliminary opportunity to examine whether the proposed rulemaking would comport with existing Commission policy and to explore various alternative proposals. In the instant proceeding, such concerns are adequately addressed without an initial comment period.

First, there is no doubt that a per-call compensation mechanism more closely comports with existing Commission policy than does the current per-phone mechanism. From the outset, both

the Commission and the industry have endorsed a usage-based system for dial-around compensation. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736, 4747 (1991) ("a per call charge would be preferable . . ."); Rate Order, 7 FCC Rcd at 3252 (1992) ("Rate Order") ("All of the commenters addressing this issue support our tentative conclusion that a per-call rate is preferable to other types of rates") (emphasis added); id., Separate Statement of Commissioner Andrew C. Barrett, at 3263 ("I do believe that a per-call mechanism is a more cost-based solution and has the advantage of offering better incentives in terms of the placement of pay phones") Memorandum Opinion and Order on Reconsideration, CC Docket No. 91-35, 8 FCC Rcd 7151, 7157 (1993) ("We continue to believe that a per-call compensation mechanism is preferable to a flat fee per-phone"). Specifically, the Commission has explained:

[C]ompensating PPOs on a per-call basis for access code calls would have the benefit of creating greater incentives for PPOs to place their payphones in locations that generate the most interstate traffic

Rate Order, 7 FCC Rcd at 3252-53 (1992).

Second, the Commission has already looked at alternatives. See, e.g., Rate Order, 7 FCC Rcd at 3252 ("on an interim basis, PPOs must be compensated on a per-phone basis, rather than a per-call basis, for originating interstate interLATA access code calls") (emphasis added).